

EXHIBIT A

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*Attorneys for Defendants OWEN H. D'SOUZA, NORMA C. D'SOUZA, and
PICASSO TRIGGER COMPANY LLC*

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

JTH Tax LLC, doing business as
Liberty Tax Service

Plaintiff,

vs.

OWEN H. D'SOUZA; NORMA C.
D'SOUZA; PICASSO TRIGGER
COMPANY LLC,
Defendants.

CV 20-00087-JAO-KJM
(840 Trademark)

RESPONSE TO PLAINTIFF'S
FIRST REQUEST FOR
ANSWERS TO
INTERROGATORIES TO
DEFENDANT PICASSO
TRIGGER COMPANY LLC;
CERTIFICATE OF SERVICE

**RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR ANSWERS
TO INTERROGATORIES TO
DEFENDANT PICASSO TRIGGER COMPANY LLC**

COMES NOW, DEFENDANT PICASSO TRIGGER COMPANY LLC, by and through its attorneys, CAIN & HERREN, ALC, and hereby provides the following responses to PLAINTIFF'S FIRST REQUEST FOR INTERROGATORIES TO DEFENDANT PICASSO TRIGGER COMPANY LLC.

A. GENERAL OBJECTIONS

(1) Defendant objects to First Request for Answers to Interrogatories to DEFENDANT PICASSO TRIGGER COMPANY LLC to the extent the information and/or documentation sought is protected from discovery pursuant to the attorney-client privilege and the work-product rule, and/or the information or documentation sought contains or reflects the impressions, conclusions, opinions, legal research or theories of the attorney(s) for Defendant.

(2) Defendant object to First Request for Answers to Interrogatories to DEFENDANT PICASSO TRIGGER COMPANY LLC to the extent Defendant are required to provide information on behalf of or to

produce documents from files or records maintained by an individual or entity other than Defendant.

(3) Defendant object to First Request for Answers to Interrogatories to DEFENDANT PICASSO TRIGGER COMPANY LLC to the extent such request for admissions demand information and/or documents that are already in the possession of or are more readily available to Plaintiff, and therefore such request for admissions are unduly burdensome, harassing and cumulative.

(4) Defendant object to each request contained in First Request for Answers to Interrogatories to DEFENDANT PICASSO TRIGGER COMPANY LLC to the extent that such requests are over-broad, unduly burdensome, vague and/or ambiguous.

(5) Defendant object to each request contained in First Request for Answers to Interrogatories to DEFENDANT PICASSO TRIGGER COMPANY LLC to the extent that such requests seek information or documents that are not relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence.

(6) Defendant object to each request contained in First Request for Answers to Interrogatories to DEFENDANT PICASSO TRIGGER

COMPANY LLC to the extent that such requests purport to require Defendant to supplement its answers to any extent other than specifically required by Rules 33 and 36 of the Hawai'i Rules of Civil Procedure.

Dated: Wailuku, Maui, Hawaii, Friday, April 30, 2021.

CAIN & HERREN, ALC



Michael J. Collins, Esq.
*Attorneys for Defendants Owen H. D'Souza,
Norma C. Souza & Picasso Trigger
Company LLC*

B. SPECIFIC OBJECTIONS AND RESPONSES

Interrogatory No. 1.

State the name(s), address(es), telephone number(s), and email address(es) of each person who provided responses or assisted in the preparation of the responses to these interrogatories.

Answer:

**Owen D'Souza
% Cain & Herren, ALC
2141 W. Vineyard Street
Wailuku, Maui, Hawaii 96793
Tel: (808) 242-9350 / email: mike@cainandherren.com**

Interrogatory No. 2.

Identify all person(s) known to you who possess any knowledge of the facts upon which you rely or will rely to defend against the allegations of the Complaint. For each person, provide the full name, current address(es), telephone number(s) and email address(es), and state the facts that you know or believe each person possesses.

Answer:

**Owen D'Souza
Norma D'Souza
Principals of Picasso Trigger Company LLC d/b/a Liberty
Tax Service**

Interrogatory No. 3.

Identify any and all of your professional or personal liability, general liability, and/or other insurance carriers and policies. Include for each policy the name of the insurer, name of all covered individuals, policy number, coverage limits, deductibles, and effective dates of coverage.

Answer:

Certificate of Insurance with

National Interstate, 1001 Kamokila blvd, #201, Kapolei, HI 96707

Limits of Insurance

1,000,000, each occurrence limit

1,000,000, personal and advertising injury limit

2,000,000, general aggregate limit

5,000 , medical expense limit

1000,000 , damage to premises rented

Interrogatory No. 4.

Any and all primary, excess and/or umbrella insurance or indemnification agreements or policies which may satisfy part or all of a

judgment that may be entered against you in this lawsuit; or indemnify or reimburse you for payments made to satisfy such judgment.

Answer:

See Interrogatory 3.

Interrogatory No. 5.

State your understanding of your obligations under the terms of the Franchise Agreement.

Answer:

Our general understanding of the terms of the Franchise Agreement, in “good faith” the Franchisor-Liberty Tax Service will under license allow Franchisee to operate a business using their brand for a fee in a specific area. We were doing business, d/b/a, Liberty Tax Service under our own business name and Liberty will provide everything we need to conduct business. We are required to obtain all state and federal license and or regulatory requirements under our own name, and Liberty is strictly a third party. In addition to this contract there is also an understanding that I already was offering tax preparation services prior to going into contract with Liberty and saw this opportunity as a way to build/expand my business.

Clarification! When we use the term Liberty Tax Services we are referring to the AD (Area Developer), an exclusive agent representing Liberty Tax Service. The AD is a third party that manages the Franchises within a region. We report exclusively to the AD and not Liberty Tax Service. The AD has complete discretion on how they manage their territory independent of the Corporation.

Interrogatory No. 6.

State all actions you took to comply with the post-termination obligations in the Franchise Agreement.

Answer:

Please note, we had two franchisee agreements, prior to the first contract termination date, we contacted Liberty/AD to clarify our position as per the contract opening a second territory violates their own contract. Liberty stated that since we were under a new contract with them, and in essence continuing with them, their post termination obligations were not applicable.

We had a balance due from the first contract and were taking on additional debt to purchase a second territory. After the data breach, we contacted Liberty to sell back or have liberty buy back a turnkey

operation to satisfy all debts going into the new territory. Liberty agreed and we began the process to sell back the territory. Liberty delayed and sabotaged the process resulting in forfeiture. The landlord rented the office to another tenant because of the Liberty Tax delayed to close the deal.

We also waited two full years after termination of the first franchise contract to use the EFIN associated with the Liberty Franchise in South Maui under the Picasso Trigger Company LLC brand. This would ensure that we did not violate any post termination agreements.

When the second contract terminated, 4/18/2019, we complied with all post termination obligations.

Again we responded to Liberty and its Agents and did not receive a response.

In general, we stopped operating under license and complied with all items and awaited instructions regarding intellectual property. Liberty did not follow up with us in a manner until we received the complaint

Interrogatory No. 7.

State the facts upon which you base your claim that the Franchise Agreement is not a valid and enforceable contract.

Answer:

Liberty violated the contract by not acting in good faith and either by directions of leadership or allowing its agents to deliberately sabotage our business operations in Maui and not providing support as promised in the contract through goods and services. In addition, they agreed to buy back the territory and deliberately stalled the process resulting in forfeiture of a turnkey location.

Liberty was also violated its own ethical and compliance mandates by allowing an employees placed on a national restriction status who are in essence banned to work at any Liberty location to work in the Kahului corporate location. Liberty also charges a 5% fee for top level media advertising, Liberty did not advertise in our areas and when asked to provide documentation, they could not do so.

Liberty did not provide adequate training for all of its products that they promised that is considered reasonable for the services provided. Specialty tax credits for the state of Hawaii, non-resident returns, business returns, etc.

Liberty did not provide software that meets the needs for the State of Hawaii. Specialty tax credits, non-resident returns, multi-state tax return compatibility, business tax return software that is accepted by the State of Hawaii.

Interrogatory No. 8.

State the total amount you claim to have paid pursuant to the Promissory Note.

Answer:

Liberty uses a complex repayment process where funds are intercepted from the operation from bank products that they rely heavily on. Since we have lost all access to the Liberty portal, all I can refer to is the data entered on the tax returns. To the best of my knowledge, we repaid the original promissory note for the first territory, had a balance due for the second promissory note, and additional funds borrowed from Liberty including royalties, advertising and default royalties for not meeting tax return preparation revenue goals. Based on tax returns amount paid was \$76,009.00. This amount includes promissory note amount.

Interrogatory No. 9.

State the total amount you claim to have paid in royalties and fees pursuant to the Franchise Agreement.

Answer:

See Interrogatory 8.

Interrogatory No. 10.

State the facts upon which you base your Second Affirmative Defense.

Answer:

Liberty failed to deliver its promises per the franchise agreement, they also operate their business using practices that are unlawful or borderline violation of local government and state regulations and also participated whether directly or indirectly in fraudulent activities by stealing client data from us to be used in another office.

Interrogatory No. 11

State the facts upon which you base your Third Affirmative Defense.

Answer:

Per contract and our understanding, Liberty states that any issues will be resolved via arbitration first. Liberty did not do so and filed a complaint against us via federal court.

Interrogatory No. 12.

State the facts upon which you base your Fourth Affirmative Defense.

Answer:

Liberty Tax Services uses a third party AD (Area Developer) as its exclusive agent to manage the Franchise within their territory. It is the Franchisor that breached its own contract by allowing the AD to work outside of the contract in the way they see it fit or at their discretion.

Interrogatory No. 13.

State the facts upon which you base your claim that you have not breached any term of the Franchise Agreement.

Answer:

Prior to going into contract with Liberty, we disclosed the fact that we already provided existing tax preparation services for free and a reasonable fee. Liberty promised us a prime territory, stated that they would give us everything we needed to operate. We complied in every possible way, until we were forced to purchase materials and or software to offer the same services. Again, we advised Liberty and its agents about all our activities.

For 9 years, we complied with the contract to the best of our ability to meet all requirements; we spent hundreds of thousands of dollars and hours to build the brand on the Island of Maui.

In spite of what Liberty did to us we operated and represented Liberty to the best of our ability to comply with their requirements and the State of Hawaii. We never had any issues with Liberty and really though we could turn the business around in spite of the breach, however, we were mistaken as Liberty failed to uphold its part of the agreement.

Interrogatory No. 14.

State with specificity, the services you currently provide and list all discontinued services, along with the date such services were discontinued.

Answer:

Liberty is a seasonal business and focuses on retail or personal income tax preparation from January through April. Liberty focuses on low income clients and pushes bank products such as refund anticipation loans, tax prep fees from refunds and in-house cashier checks for clients who don't have bank accounts. These options come at high prices and a way to Liberty to maximize revenue.

Training is minimal, in essence you get a few hours and thrown to the wolves. If you make a mistake, you are ultimately financially responsible.

Picasso Trigger Company LLC is a full service tax preparation and business support and development business. We are a minority owned, local and community based business providing services for local, state and international clients, we provided support at many levels, payroll, bookkeeping, business setup, specialty taxes, all business tax preparation including trusts and estates, tax resolution, IRS and State Tax issues and much more. Prior to the pandemic, we offer, mobile, remote, and free services for the residents of our island who qualify and distance based clients, both domestic and international.

Interrogatory No. 15.

State the facts upon which you base your claim that venue and/or jurisdiction is not proper.

Answer:

Maui is an island and thus has geographic limitations. We solicited Liberty for the Island of Maui however; Liberty did not

disclose that they had multiple territories and that the prime territory had already been sold.

We were up front about our goals and objectives and current activities, Liberty wanted representation on the Island of Maui, and they wanted someone with aggressive goals. We advised them that we already had an existing business and were looking to partner with an existing tax business to build our business.

Liberty aggressively pursued us from that point on.

Now that the contract is over and a complaint filed, Liberty is using venue as basis to claim breach of contract. We were told that as long as we operated in an open territory and not actively solicit clients in other closed/sold territories we could conduct business.

Regardless of the contract, Liberty made concessions verbally and in fact is in breach of its own contract prohibiting such concessions.

Interrogatory No. 16.

State the facts upon which you base your claim that Plaintiff did not provide Defendants Norma and Owen with training.

Answer:

We were told that we would be provided complete training with support prior to opening business. In actuality, the first training session was on operations, part of that training was to wear a costume and waive at traffic on a public street in Las Vegas. In this training, no on hands training was provided.

The actual tax training consisted of flying to another island operated by a zee and given a one day, approximate 6 hour crash course on navigation and basic forms. This training was at our cost.

To prepare taxes requires extensive knowledge and training on how to use the software. Per their contract, what is stated is not reasonable and adequate, this was challenged and they assured me that we would get additional training.

At no time did Liberty provide hands on training with a dedicated trainer on site as promised, instead, they use webinars, bulletins and workbooks again with no support over the years based on the basis that you are already trained. If there was a problem, I had to initiate contact with their tech department to figure out how to resolve issues.

Liberty did not provide business tax preparation training for third party software. I have extensive pc and business system experience and literally self-taught myself how to use and operate the software. With this knowledge, I then trained my staff at personal cost.

Interrogatory No. 17.

State the facts upon which you base your claim that Defendants did not agree to the provisions contained in Section 12 of the Franchise Agreement.

Answer:

Prior to going into contract, we disclosed to Liberty that we already had an existing business and provided tax preparation services. We wanted to build our business model by incorporating an existing brand and Liberty appeared to be a good fit, we contacted Liberty, we had aggressive goals, we wanted to expand, Liberty wanted us and aggressively pursued us. Liberty and its agents agreed to our terms and agreed, when we mentioned the non-compete restrictions, we were told that would not be a problem and just conditional, in essence, they

violated their own contract my making concessions outside of the contract that is prohibited.

Liberty has also violated the contract by failing to deliver goods and services, participating in fraudulent activity and thus has breached its own contact thereby making it null and void.

Interrogatory No. 18.

State the facts upon which you base your claim that Defendants did not agree to the provisions contained in Section 12 of the Franchise Agreement.

Answer:

Confidential information, proprietary information.

Liberty Tax system may have proprietary tax software for personal tax preparation, however it is not unique, and they have created an application to conform to IRS rules, regulations and tax calculation. There are many other tax software companies that have done the same providing similar or superior performance products with no contract limitations.

Liberty software is plagued with glitches and has one unique component, it was designed to offer financial products to taxpayers and ensure that Liberty can intercept these fees. Their software also incorporates spyware so they can monitor your actions remotely to ensure compliance. We had nothing to hide and accordingly had no issues with their spyware.

Their marketing plan is based on grass roots advertising that can be found in many publications both in hardcopy or online. Their marketing plan of grass roots advertising is not proprietary and incorporates many questionable practices. You are told to ignore restrictions until you get caught.

Their financial products are provided by third party banking institutions are also offered to individual and tax businesses including refund anticipation loans and tax prep fee deductions. This is not proprietary information.

Their business software is provided by a third party vendor that also sells the same software to the general public.